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# Human rights of migrants

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante, in accordance with General Assembly resolution 64/166 and Human Rights Council resolution 8/10.

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# Report of the Special Rapporteur on the human rights of migrants

*Summary*

The present report, on activities carried out between June 2009 and July 2010, is submitted pursuant to General Assembly resolution 64/166 and Human Rights Council resolution 8/10.

The report summarizes the activities undertaken by the Special Rapporteur on the human rights of migrants during the period under review and focuses on the impact of the criminalization of migration on the protection and enjoyment of human rights. The report highlights the detrimental consequences of such policies on groups that should not be considered aprioristically as irregular migrants, including victims of human trafficking, asylum-seekers and children. The report also provides examples of good practices in the mainstreaming a rights-based approach to migration and managing irregular migration without resorting to its criminalization. The report concludes with recommendations for further consideration and action by Member States and other stakeholders.

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# I. Introduction

1. The present report is being submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Jorge Bustamante, pursuant to Assembly resolution 64/166 and Human Rights Council resolution 8/10. The Special Rapporteur reports on his activities in fulfilment of his mandate between June 2009 and July 2010. He also highlights issues related to the impact of the criminalization of migration on the protection and enjoyment of human rights, presents an illustrative number of good practices and promising policies and makes recommendations to Member States and other stakeholders.

# II. Activities of the Special Rapporteur

2. The Special Rapporteur carries out his activities in accordance with Human Rights Council resolution 8/10. Further thematic guidance for the activities of his office is provided by Human Rights Council resolutions 9/5 and S-10/1 and General Assembly resolutions 62/156, 63/184 and 64/166.

3. During the reporting period, the Special Rapporteur participated in the sixteenth and seventeenth annual meetings of special procedures mandate holders of the Human Rights Council, held from 29 June to 3 July 2009 and from 28 June to 2 July 2010. He also participated as a keynote speaker at the following meetings: the first meeting of the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights, held at the headquarters of the League of Arab States in Cairo from 7 to 9 December 2009; the expert consultation on the right to education of international migrants, refugees and asylum-seekers convened by the Special Rapporteur on the right to education with the support of the Open Society Institute, in January 2010; and the Global Consultation on Migrant Health organized by the International Organization for Migration (IOM) and the World Health Organization (WHO) in Madrid from 3 to 5 March 2010. He also attended several events organized by civil society organizations and met on several occasions with civil society representatives to discuss specific issues related to his mandate.

4. The Special Rapporteur continued to receive information about the situation of migrants worldwide and to exchange communications with Governments. A summary of the communications sent from March 2009 through March 2010, together with replies from Governments, was included as an addendum to the 2010 annual report presented at the fourteenth session of the Human Rights Council (A/HRC/14/30/Add.1).

5. During the period under review, the Special Rapporteur visited Senegal (17 to 21 August 2009) and Japan (23 to 31 March 2010). The Special Rapporteur also plans to visit South Africa in 2010, at the invitation of the Government. The reports of his country visits will be presented at a forthcoming session of the Human Rights Council in 2011.

6. The Special Rapporteur presented his thematic report to the Human Rights Council on the rights to health and adequate housing in the context of migration (A/HRC/14/30). He recalled the universality and indivisibility of human rights, and stressed that States must take immediate and concrete steps to ensure the realization of the human rights of migrants at all stages of migratory processes in countries of origin, transit and destination. He also made a series of recommendations for further

consideration and action by States and other stakeholders and wishes to encourage States to address those recommendations.

## III. Issue in focus: the impact of the criminalization of migration on the protection and enjoyment of human rights

7. In 2008, the Special Rapporteur warned the Human Rights Council of the increasing criminalization of irregular migration and the abuses of migrants during all phases of the migration process. He also referred to the externalization of migration control policies, the criminalization of labour migration, violations against irregular migrants pertaining to interception and rescue at sea, detention and expulsion, and smuggling and trafficking.[1]

8. In the present report, which is being submitted two years later, the Special Rapporteur observes with deep concern that the trend towards increasing criminalization continues. In addition, insufficient progress has been made in mainstreaming human rights into migration governance. Yet, migration can be an essential component of development and prosperity in countries of destination, transit and origin in all regions of the world, and migrant labour continues to be vital, and in demand, in most countries around the globe.

9. The Special Rapporteur observes that disregard for human rights in migration management initiatives has detrimental consequences not only for the protection of non-documented or irregular migrants, but also for migrant populations as a whole and host societies at large. Accordingly, he proposes, in this report, to expand the framework of analysis to include the overall impact and consequences entailed by policies that use criminal penalties, or administrative penalties which mimic criminal ones, including policies that encourage labelling migrants as criminals or illegal.

10. While recognizing the complexity of irregular migration and the plight of irregular migrants, smuggled migrants and victims of abusive forms of migration and transnational organized crime, the Special Rapporteur wishes to stress that he does not aim to encourage irregular migration, but rather to underscore that irregular migration is sometimes tacitly encouraged by the migration management policies put in place by States. He also aims to highlight that a simplistic crime prevention or law enforcement approach is ineffective and usually neglects the human rights concerns involved in the complex causes and effects of irregular migration, in particular the importance of States adhering to international human rights standards vis-à-vis all migrants, whether documented or not.

11. In line with the above, the Special Rapporteur wishes to draw the General Assembly's attention to major human rights implications of the criminalization of irregular migration. The Special Rapporteur expects that his report will contribute to the dialogue on these issues in the framework of the fourth meeting of the Global Forum on Migration and Development, which will be held in Mexico in November 2010. In his view, the Forum's central theme "Partnerships for migration and development: shared prosperity-shared responsibility" is momentous. It provides an important platform for dialogue among States and other stakeholders on migration

[1] See A/HRC/7/12.

management and the protection of the human rights of migrants as the sine qua non for harnessing the benefits of migration and making of it a choice and a crucial tool for sustainable development.

12. The present section is divided in three major sub-themes: (a) the impact of the criminalization of migration on the enjoyment of human rights; (b) the impact of the criminalization of migration on specific groups; (c) examples of good practices and alternatives to the criminalization of irregular migration. The report concludes with a number of recommendations aimed to ensure that States adopt successfully a rights-based approach to migration, which includes rights-based alternatives to the criminalization of migration.

13. The Special Rapporteur expresses his gratitude for the cooperation and valuable inputs provided by many stakeholders during the course of his mandate.

## A. The impact of the criminalization of migration on the enjoyment of human rights

14. The Special Rapporteur observes that migration policies, plans and programmes that aim to address solely security and border control concerns lack human and protection approaches, impact detrimentally on the enjoyment of human rights by migrants and do not serve the purpose of deterring irregular immigration and discouraging migrants' smuggling and human trafficking.

15. The Special Rapporteur wishes to draw the attention of the General Assembly to the dangers of these policies, not only for migrants, but also for the migrants' societies of transit and destination. Research studies have already demonstrated that many enforcement mechanisms designed to prevent irregular or unauthorized migration, including harsh policies of interception, carrier sanctions and immigration control activities, may themselves be responsible for violence and abuse and may have the side effect of encouraging the expansion of smuggling and trafficking networks.[2]

16. In the Special Rapporteur's view, criminalizing irregular migrants for the offence of being in a country without adequate documentation makes all migrants, regardless of immigration status, vulnerable to potential racist or xenophobic acts. Societies quickly distort the particular situations of migrants, and associate them with criminality, including organized crime, drug trafficking, robbery or even terrorism. As a result, migrants are prone to xenophobic outbreaks of abuse and violence, as evidenced by some of the alleged human rights violations brought to the attention of the Special Rapporteur over the past two years.[3]

17. This detrimental pattern of individual and group behaviour in some transit and destination societies has a negative impact on children's upbringing since xenophobic models are handed down to them by adults and discriminatory sectors of society. In that connection, the Special Rapporteur wishes to warn the General Assembly of the consequences of the criminalization of migration on the enjoyment

[2] See *Irregular Migration, Migrant Smuggling and Human Rights. Towards Coherence*, International Council on Human Rights Policy, Geneva, 2010; Andrew Brower and Judith Kumin, "Interception and Asylum: Where Migration Control and Human Rights Collide", *Refuge*, vol. 21, No. 4, December 2003.

[3] See A/HRC/14/30/Add.1 and A/HRC/11/7/Add.1.

of human rights by migrants and to draw attention to the disproportionate use of the criminal justice system to manage irregular migration and of detention in migration management, as well as the inappropriateness of labelling migrants as "criminals" or "illegal", which, in turn exerts influence on the use of profiling[4] against migrants.

## 1. The disproportionate use of the criminal system of justice to manage irregular migration

18. Breaches of immigration law are considered as criminal offences by a number of countries. Such breaches include: situations of irregular entry; lack of residence authorization; overstay using an expired residence authorization or tourist visa; and unauthorized re-entry after a deportation and re-entry prohibition decision. Some countries also criminalize third party assistance to irregular or non-documented migrants, or oblige third parties to report migrants (or suspected) migrants in irregular situations, a measure that is increasingly being used to discourage migration in general and to deter irregular immigration in particular.[5]

19. Migration management based on criminal law tends to disregard a human rights dimension of migration and to focus solely on measures to address irregular migration by strengthening border controls and criminalizing both the facilitators and the migrants themselves. The Special Rapporteur has shown in the course of his mandate that the use of criminal measures to manage migration undermines the human rights of migrants and can directly or indirectly curtail their access to basic social rights, particularly health care, education and housing, as outlined in his annual thematic report to the Human Rights Council.[6] In some instances, these measures also trigger multiple forms of discrimination and, in extreme cases, they have also endangered or violated the right to life.

20. In line with the above, the Special Rapporteur wishes to stress that the use of criminal law in the field of migration seldom serves the purpose of making migration safer, more secure or protected. As highlighted recently by the Commissioner for Human Rights of the Council of Europe, "criminal law is designed to punish individuals who harm other individuals or the society at large" and crimes of border crossing or stays on the territory of a State beyond a permitted period "are victimless crimes" and do not pose any harm to the society at large, but, if at all, "to the integrity of the State's border and immigration control laws".[7]

21. The root causes of irregular migration are not addressed by resorting to its criminalization. Irregular migration is a complex phenomenon with multiple and interrelated causes, closely linked to three major triggers: the existence of increasingly restrictive controls in some countries of destination, as well as

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[4] "Migrant profiling" is defined in the present report as the use of generalizations grounded in immigration status or, in the most common patterns of ethnicity, race, national origin or religious affiliations of migrants as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity. Profiling is accepted as a policing tool as long as the profiles used by police are based on specific information about an individual or factors that are objective and statistically proven to be significant indicators of criminal activity. See: *Ethnic Profiling in the European Union: Pervasive, Ineffective and Discriminatory*, Open Society Justice Initiative, New York, 2009.

[5] A/HRC/7/12.

[6] A/HRC/14/30.

[7] *Criminalisation of Migration in Europe: Human Rights Implications*, Commissioner for Human Rights, Issue Paper, 2010.

restrictions on legal avenues for migration (including family reunification); a rise in unemployment and social exclusion in some countries of origin, along with increased structural disparities within and among countries; and pull factors in destination countries, particularly the increased demand in the informal sectors of the labour market, which is endogenous to countries of destination.

22. The Special Rapporteur holds the view that irregular migration is the result of the interaction of factors in countries of origin and destination and that therefore, managing irregular migration is a shared responsibility as pointed out in the theme of the fourth meeting of the Global Forum on Migration and Development.[8] In his view, recognizing the demand for the labour force of irregular migrants in countries of destination should be the basis for the moral and legal obligation of countries of destination and origin to share responsibility for shaping and implementing a human rights-based approach to migration governance and subsequent decriminalization of irregular migration.

### 2. The disproportionate use of detention in migration management

23. The Special Rapporteur deeply regrets that in many countries, immigration procedures routinely include detention as the main, or even the only, interim measure to ensure the efficacy of migration control. Detention is also used as a deterrent measure to prevent further arrivals of migrants and asylum-seekers. In his view, these objectives cannot justify the widespread and increasing use of immigration detention. The Special Rapporteur is of the view that States should, on the contrary, progressively abolish it.[9]

24. The Special Rapporteur is also concerned that in some instances immigration detention mimics criminal detention and is applied without any judicial oversight, thus operating in clear contradiction to international law and human rights standards. He remains concerned about arbitrary migration-related detention laws and practices, the general absence of implementation of judicial and due process of law guarantees, and regrets that in some instances the maximum length of immigration detention is undetermined.

25. The Special Rapporteur concurs with the Working Group on Arbitrary Detention, which has stated that the principle of proportionality requires that administrative detention should be considered as a measure of last resort. Strict legal limitations must be observed and judicial safeguards provided for. The reasons put forward by States to justify detention, such as the necessity of identifying migrants in irregular situations, the risk of migrants absconding or facilitating the expulsion of irregular migrants who have been served with removal orders must be clearly defined and enumerated in national legislation.[10]

26. Migrants in detention are sometimes confined in overcrowded locations without adequate health care, food, sanitation or safe drinking water. Some are also subjected to prolonged or indefinite administrative detention, in conditions which have been denounced by the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

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[8] See http://www.gfmd.org/mexico-2010/.

[9] E/CN.4/2003/85, para. 74.

[10] A/HRC/13/30.

27. In line with the above, the Special Rapporteur wishes to recall that detention is a tool that characterizes criminal law as opposed to administrative law, which, by nature, should resort to alternative interim measures to detention. He wishes to stress that the detention of migrants should be a measure of last resort when no alternative options are available. Accordingly, migration law and policy should effectively regulate alternative measures that could be applied and duly monitored, both by administrative and judicial bodies.

### 3. The improper use of the word "illegal" to label migrants

28. The Special Rapporteur wishes to emphasize that all migrants, regardless of immigration status, are first and foremost human beings, entitled to be treated in a manner that complies with international law and human rights standards and therefore, he wishes to draw the attention of the General Assembly to the inadequacy of using the word "illegal" to refer to human beings in a situation of immigration irregularity.

29. The Special Rapporteur also wishes to highlight that the term "illegal migrant", broadly used in the context of the criminalization of irregular migration is not recognized in international law. He wishes to recall that "irregular" or "non-documented" migrant, as defined by article 5 of the International Convention on the Rights of All Migrant Workers and Members of Their Families, are internationally accepted terms to describe the situation of not having, or having lost, the proper documents that allow migrants either to reside in a given territory or to work there. In his view, labelling human beings as "illegal" is inconsistent with human dignity, particularly in light of the content that the term "illegal" carries with it, tainting migrants with prejudice and criminal suspicion because of its linkages with criminal law and the criminal justice system.

30. The Special Rapporteur wishes to recall that the human rights enshrined in the Universal Declaration of Human Rights and in the core international human rights treaties extend to all migrants, including those who are in a non-documented or irregular situation. This has been repeatedly underlined by human rights mechanisms and is also made explicit by the International Convention on the Rights of All Migrant Workers and Members of Their Families. While some limited differential treatment between regular and irregular migrants may be justified under international human rights law, for example, with regard to political rights and access to certain specific programmes and services, such differential treatment must never encroach on the fundamental rights and liberties that a State must guarantee to all persons under its jurisdiction, irrespective of their immigration status.

### 4. The profiling of migrant communities

31. Information collected and received by the Special Rapporteur indicates that, in some instances, law enforcement officials routinely use generalizations about ethnicity, religion, race, colour of the skin, or national origin in deciding whom to target for identity checks, stops, searches and sometimes arrest rather than utilizing objective evidence as the basis for making law enforcement and/or investigative decisions on criminal activity and the correlative criminal responsibility. Reports received by the Special Rapporteur also indicate that in some instances racial and ethnic profiling may result from the racist behaviour of individual law enforcement

officials or, in some instances, from institutionalized racist and xenophobic practices, which are contrary to international law and human rights norms.

32. The Special Rapporteur wishes to stress that profiling of immigrant communities and their purported association with criminal activities clearly contrast with principles of human dignity and the prohibition of discrimination.[11] Profiling also disproportionately affects migrant communities, making them a target of mass identity checks, raids on homes, businesses and religious sites in the absence of specific evidence. Information received by the Special Rapporteur indicates that in some instances law enforcement officials have been tasked with rounding up and deporting foreigners in order to meet nationally set targets. The Special Rapporteur has also been informed that these practices sometimes target individuals from specific nationalities because repatriation costs are lower to certain countries.

33. From a due-process-of-law perspective, migrant profiling is highly detrimental as the very use of profiling defeats the presumption of innocence. The use of ethnic profiling, wittingly or not, contributes to a growing sense of marginalization of minority and immigrant communities, labelling entire racial, ethnic or religious groups as more likely to commit crimes and thereby signalling to the broader society that all members of that group constitute a threat. This is conducive to the creation of an environment of mistrust, ethnic or racial hatred, racism, racial discrimination, xenophobia and related intolerance, which, in some instances, contributes to the alienation or segregation of entire migrant communities.

34. The Special Rapporteur is informed about the several obstacles to determine in practice if a police action is conducted for immigration or law enforcement purposes when profiling is used, and regrets that States are not sufficiently measuring the impact of their adopted policies. Information gathered by the Special Rapporteur indicates that profiling is widespread and, in some instances, institutionalized and that Governments are not collecting appropriate data in this connection. He also observes with dismay that in some instances law enforcement authorities disclose statistical information on crime that fails to distinguish between immigration offences and other offences. In addition, statistics on stops and searches fail to distinguish between immigration control and crime. This lack of distinction misleads the general public and nurtures a distorted image of widespread criminality among foreigners and migrant communities. He also regrets that gender considerations sometimes exacerbate the use of profiling, for example when anti-trafficking initiatives aimed to prevent the movement of women or immigration restrictions target men from specific nationalities. Other issues of deep concern include the retention of information, such as biometric data, with no regard for the right to privacy.

## B. The impact of the criminalization of migration on specific groups

35. The Special Rapporteur notes with concern that the criminalization of irregular migration has particularly negative implications for the protection of human rights of specific groups. He further notices that the reasons that may prompt persons to

[11] See A/HRC/4/26, paras. 36 and 40-42. See also Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism: Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand*, Berlin and New York, Springer, 2010.

flee their countries of origin do not always coincide with the reasons internationally recognized as grounds for seeking and recognizing the status of refugees, but which nevertheless can leave such persons in a vulnerable situation and in need of protection of their human rights.

36. The Special Rapporteur wishes to draw the attention of the General Assembly to the millions of people who have not been formally denied or deprived of nationality but who lack the ability to prove their nationality, or, despite documentation, are denied access to the many human rights that other persons under the jurisdiction of States enjoy.[12] He also wishes to draw attention to allegations about deportations of persons with mental disabilities without judicial guarantees, including the right to be assisted by a lawyer.

37. The Special Rapporteur is also concerned about the disproportionate use of force by security forces at borders, which, according to information received, has led to shootings and deaths of migrants, asylum-seekers and refugees. In this regard, the Special Rapporteur wishes to recall that international law and human rights standards demand that the use of force by law enforcement officials must be proportionate to the actual threat faced, and wishes to discuss, in the present report, the impact of the criminalization of irregular migration on asylum-seekers, victims of trafficking and children.

## I. Asylum-seekers

38. The Special Rapporteur wishes to recall that persons who are in need of international protection are often unable to travel out of their country, or into a safe country, where they can seek asylum. With the increasing use of mandatory visa requirements, asylum-seekers who may not be able to get passports in their country of origin without putting their lives in danger have no option than to resort to irregular means to travel and enter safer territories.

39. The Special Rapporteur is especially concerned at the consequences for asylum-seekers of criminalizing third parties who are deemed to have facilitated irregular entry. The imposition of criminal penalties on carriers who transport asylum-seekers fails to recognize that individuals seeking protection in other countries are often forced to use false documents or resort to smugglers in order to leave their country. Many are unable to obtain proper documentation and permission before fleeing, often because they fear persecution from the same authorities that should issue their travel documents. False or forged documents are used in order to allow them to enter a country where they can seek protection.

40. The Special Rapporteur regrets that laws and practices in many States result in the criminal prosecution of asylum-seekers and refugees for irregular entry, stay or the use of fraudulent documents, despite this being prohibited by international refugee law, and despite the fact that it is explicitly against the recommendations of the Executive Committee of the United Nations High Commissioner for Refugees. He further regrets that some countries apply the same penalties for irregular entry to asylum-seekers, including, in extreme cases, whipping.

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[12] Indira Goris, Julia Harrington and Sebastian Köhn, "Statelessness: What It Is and Why It Matters", *Force Migration Review*, Issue 32, April 2009.

41. In the Special Rapporteur's view, criminalizing the entry and stay of asylum-seekers, as well as their methods of arrival, increases the vulnerability of asylum-seekers in host countries and feeds into the depiction of asylum-seekers as criminals, along with other so-called "illegals". Furthermore, with the increasing focus of migration management on controlling people and their movements, persons who move irregularly are more likely to be profiled than those who do not. In this regard, the Special Rapporteur is very concerned about the assumption that in practice there is some overlap between the categories of refugee and terrorist[13] and calls upon States to support the situation of those escaping persecution and danger, taking all necessary measures to address the stereotyping of asylum-seekers and refugees and proscribing detention in the asylum-seeking determination processes.

### 2. The protection of victims of labour abuse, exploitation and human trafficking

42. The criminalization of irregular migration and the focus of migration management on security and border controls, place serious obstacles in the way of identifying and protecting victims of labour abuse, exploitation and human trafficking. In this regard, the Special Rapporteur recalls that if victims are not identified or, if they are incorrectly identified as "criminals" or "illegal" migrants, enjoyment of their rights and protection are hampered. As recalled by the Special Rapporteur on trafficking, the ability of victims to access the rights they are entitled to can only be ensured by their quick and accurate identification as victims.[14]

43. The criminalization of irregular migration further limits victims' access to justice and protection and decreases the likelihood that they will report abuse to authorities. The added fear of criminal prosecution and punishment further prevents trafficked and smuggled persons from seeking protection, assistance and justice. The Special Rapporteur observes that recent border control measures aimed at tightening and preventing clandestine entry, including joint border enforcement operations in transit States or at sea, have had troubling effects on the victims.

44. The Special Rapporteur wishes to refer especially to trafficked victims, as he has received information on persons being trafficked and charged with illegal entry or forging of documentation, disregarding their condition as victims of transnational organized crime. Victims are then re-victimized by the criminal justice system and are trapped in a vicious circle of multiple forms of discrimination and victimization.

45. The Special Rapporteur regrets that States have adopted increasingly aggressive anti-smuggling and anti-trafficking laws and policies, with a criminalization and law enforcement focus, without regard to other key elements such as the fundamental human rights obligations of States. He expresses concern about legislation in some States, which effectively allows victims of trafficking to be treated as criminals rather than victims of crime. Trafficked or smuggled, irregular migrants are in many instances prosecuted or detained because of their irregular migration or labour status as well as for using forged documentation, having left or entered a country without authorization, begging or for having worked in the sex industry. In this regard, he wishes to stress that victims of trafficking must be treated as victims of crime and protected against criminalization, including by

[13] Elspeth Guild and Paul Minderhoud, eds., *Immigration and Criminal Law in the European Union: The Legal Measures and Social Consequences of Criminal Law in Member States on Trafficking and Smuggling in Human Beings*, 2006, Martinus Nijhoff.

[14] A/64/290.

adopting laws that protect trafficked persons from prosecution or punishment for trafficking-related offences such as holding false passports or working without authorization.

46. In line with the above, the Special Rapporteur wishes to highlight that States should provide assistance to victims of trafficking irrespective of their cooperation in relation to judicial proceedings, and invites States to strengthen efforts to improve victim identification processes and the corresponding referral mechanisms, including referral to asylum-seeking systems, where appropriate.

### 3. The protection of children

47. The Special Rapporteur continues to observe, as highlighted in his 2009 report to the General Assembly,[15] that many countries still allow migration-related detention of children, in contravention of the best interests of the child. He also regrets the lack of "benefit of the doubt" in age-assessment processes for migrant children, the detention of unaccompanied minors, and in general, the detention of children in facilities that are unsuited for them and/or their families. In his view, the absence of a child and adolescent perspective in migration management is particularly worrisome with regard to immigration detention.

48. The Special Rapporteur wishes to insist that migrant children should not be detained on the basis of their migration status or that of their parents. In his view, detention of children (either unaccompanied or with families) will never be in their best interests and that States should provide alternative measures to detention and confinement for all children subject to immigration control procedures.[16] He also wishes to insist that immigration related detention of children should not be justified on the basis of maintaining the family unit (for example, detention of children with their parents when all are irregular migrants). As stressed by the United Nations Children's Fund (UNICEF), the Committee on the Rights of the Child and others, detention of children will never be in their best interests. Hence, the ideal utilization of a rights-based approach would imply adopting alternative measures for the entire family. States should therefore develop policies for placing the entire family in alternative locations rather than closed detention centres.

49. The Special Rapporteur wishes to draw the General Assembly's attention to the impact and consequences that immigration-related detention of adults may have on their children, particularly in connection with their rights to development, family life and mental health. In his view, adopting a child-rights approach, which considers the child's best interests, will require alternative policies to address the migration status of their parents, including measures that facilitate regularization, access to social rights and family unity, rather than resorting to the criminal justice system.

50. The Special Rapporteur is especially concerned about the protection of the human rights of children who are subject to deportation and wishes to insist on the importance of respecting the best interests of the child in such procedures. Furthermore, he reiterates his encouragement to States to give consideration to the principle of non-deportation of unaccompanied children and the principle that

[15] A/64/213 and Corr.1, para. 97.

[16] A/HRC/11/7, para. 43.

children should be repatriated only if it is in their best interests, namely, for the purpose of family reunification and after due process of law.

51. The Special Rapporteur also wishes to draw the General Assembly's attention to the dearth of qualitative and quantitative information regarding the experiences of migrant children (both unaccompanied and with their families) within migration control measures (e.g., information about their treatment at borders and in detention centres). He also wishes to draw attention to the increase of exploitation of migrant children for economic purposes and regrets that indicators on these issues are absent in most transit and destination countries, and that monitoring mechanisms both governmental and non-governmental, are quite scarce.

## C. Examples of good practices and alternatives to the criminalization of irregular migration

52. In discharging his mandate, the Special Rapporteur has come across a number of initiatives, activities and policies implemented by Governments, intergovernmental and civil society organizations and the private sector that reflect commitment to the realization of human rights while managing irregular migration. The Special Rapporteur wishes to highlight a number of those practices, policies and programmes and, while emphasizing that the list is not exhaustive, to encourage all parties to submit to him information on other pertinent practices, policies and programmes.

### 1. Good practices

53. In the Special Rapporteur's view, creating opportunities for regular migration is a key strategy to address the root causes of irregular migration and discourage migrant smuggling and human trafficking. In this regard, he welcomes regional integration frameworks, such as the European Union, the Southern Common Market (MERCOSUR) and the Economic Community of West African States (ECOWAS), all of which favour labour mobility through legal migration channels. The Special Rapporteur wishes to highlight some practices aimed at promoting human rights-based approaches to migration management and at regularizing the situation of non-documented migrants on a large scale.

#### (a) International frameworks for rights-based partnerships on migration management

54. The Special Rapporteur also welcomes the adoption of international frameworks for rights-based partnerships on migration management by international organizations and commends the global efforts of those organizations to create knowledge-sharing tools to promote a rights-based approach to migration management. He celebrates the adoption, in 2005, by the International Labour Organization (ILO) of its multilateral framework on labour migration, based on a set of non-binding principles and guidelines for a rights-based approach to labour migration. This initiative is based on research, global labour migration practices and principles contained in relevant international instruments and international and regional policy guidelines, including the International Agenda for Migration Management. It also includes the collection of examples of best practices, which have been broadly publicized by ILO. In the Special Rapporteur's view, the collection of good practices is a valuable means to provide practical guidance to

Governments and other stakeholders with regard to the development, strengthening and implementation of more effective and rights-based national and international labour migration policies.

55. The Special Rapporteur also praises the adoption of the 10-point plan of action by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 2007. The plan is a tool to assist all stakeholders in migration management policies, especially in the context of mixed migratory flows where protection initiatives are particularly required. In his view, the 10 areas addressed in the plan should feature prominently in migration management initiatives and activities in countries of transit and destination. The areas are: cooperation among key partners; data collection and analysis; protection-sensitive entry systems; reception arrangements; mechanisms for profiling and referral; differentiated processes and procedures; solutions for refugees; addressing secondary movements; return arrangements for non-refugees and alternative migration options, and information strategy. The Special Rapporteur commends the impact of the plan, which inspired the development of protection initiatives in various regions and which were compiled in 2009 by UNHCHR. He welcomes the compilation as a knowledge-sharing tool that provides practical guidance for the implementation of the 10-point plan in action.

### (b) Large-scale regularization programmes

56. The Special Rapporteur wishes to highlight the fact that creating opportunities for regularizing the situation of non-documented migrants constitutes, in his view, a rights-based alternative to managing irregular migration without resorting to its criminalization.

57. The Special Rapporteur welcomes recent large-scale regularization programmes, which improve the enjoyment of human rights by migrants, particularly economic and social rights, and contribute to their integration in countries of destination. In this regard, he concurs with the United Nations High Commissioner for Human Rights, who stressed that this approach recognizes that migrants who do legal and decent work are likely to contribute more to development than those who are economically exploited and socially excluded.[17]

58. The Special Rapporteur observes that large-scale regularization programmes are usually part of a multi-pronged strategy. They are aimed at incorporating workers in the informal "underground" economy into the formal economy, and in that way, to increase their contributions to national tax and social security revenues, limit workers exploitation and abuse and discourage migrant smuggling and human trafficking. He also observes that these programmes usually specify requirements of potential beneficiaries, including length of residence, proof of work and, in some instances, proof of social welfare contributions, age range and nationality (when the regularization programmes target migrants from countries with cultural and historical connections with the host country).

59. The Special Rapporteur welcomes the positive impact that recent large-scale regularization exercises have had on the lives, working conditions and realization of

[17] Office of the United Nations High Commissioner for Human Rights (OHCHR), Migration and Development: a Human Rights Approach, Geneva, 2008, para. 47, available from: http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/MigrationDevelopmentHC'spaper.pdf.

the human rights of former irregular migrants. The Special Rapporteur wishes to mention an illustrative number of examples of these programmes, which have been implemented in some countries in the Latin American region. Between 2002 and 2006, Mexico implemented a large-scale regularization programme, which included 15,000 non-documented migrants, mostly from countries in Central America. In 2008, Mexico adopted a new regularization programme for undocumented migrants who entered its territory before 2008, to be implemented between November 2008 and May 2011. The Bolivarian Republic of Venezuela implemented "Mission Identidad" (Identity Mission) between 1998 and 2006, which benefited approximately 415,000 irregular migrants who had lived undocumented in the country for many years.

60. The Special Rapporteur wishes to draw special attention to the large-scale regularization programmes in Argentina, which have been implemented in the context of the economic and financial crisis and have been used by the Government as a strategy and an effective tool to successfully overcome the crisis. In 2004, Argentina adopted its "Patria Grande" programme, including Decree No. 1169, which included a comprehensive approach to address irregular migration under the framework of the Migratory Law (Act 25875). The latter framework establishes that nationals of States Members MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) or associate States (Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela (Bolivarian Republic of)) with no criminal background can obtain legal residence in Argentina. This programme has benefited 800,000 irregular migrants and contributed to a decrease in both the number of undocumented migrants and the unemployment rate.[18]

61. Large-scale regularization programmes in Brazil (2009), Chile (2007-2008) and Ecuador (2009-2010) are additional good examples from the Latin American region.

### 2. Promising policies and programmes

62. Creating legal options to address the situation of persons who are not deemed refugees but who may require international protection on an individual basis is one of the most promising policies and programmes that have been drawn to the Special Rapporteur's attention. Promising measures in this regard include the "discretionary leave to remain" and the "humanitarian protection leave" available in the United Kingdom of Great Britain and Northern Ireland, which can be granted for a maximum three-year period and which are available to individuals who have not been considered for international protection or who have been excluded or to persons, who, if returned to their countries, might face serious risk to their life arising from the death penalty, unlawful killing, torture or inhuman or degrading treatment or punishment. Similarly in Germany, the commissions for hardship cases, established as part of the German Residence Act of 2005, may recommend granting a residence permit to unsuccessful asylum-seekers who, otherwise, would be obliged to leave the country. This mechanism enables the authorities to review the individual circumstances of the applicants beyond the requirements set up in the international refugee regime.

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[18] United Nations High Commissioner for Refugees, 10-point plan expert round table No. 3, "The return of non-refugees and alternative migration options" (Geneva, 30 November-1 December 2009), summary report, December 2009, available from: http://www.unhcr.org/refworld/docid/4ba9ddd22.html.

63. The Special Rapporteur has received information on some promising legal provisions aimed at replacing immigration detention. Information received indicates that alternatives to immigration detention may vary from cost-effective options already available in several legal systems such as release on bail, bond and surety, conditional release, return to custody for specified hours following release for employment, schooling or other defined purposes, to more innovative schemes such as open and semi-open centres, directed residence and restrictions to a specified district. Information received by the Special Rapporteur indicates that examples of legal presumption against immigration detention are found, inter alia, in the legislation of Austria, Brazil, Denmark, Finland, Ireland, Lithuania, New Zealand and Switzerland.

64. The Special Rapporteur also welcomes the adoption of legislation in Panama (Migration Law No. 3, February 2008, article 93), which explicitly proscribes the detention of children. These examples illustrate that States alone or in cooperation with other stakeholders may successfully resort to alternatives to the criminalization of irregular migration or align their laws with international law and human rights standards.

65. The Special Rapporteur welcomes the interest and activities undertaken by international organizations and civil society to explore, together with Member States and other stakeholders, alternative measures to immigration detention as a way to help States improve their compliance with their human rights obligations in relation to the treatment of migrants. In this regard, the Special Rapporteur praises the pilot project on alternatives to detention for families with children who are awaiting return that has been carried out in Belgium since October 2008 as a practical and positive example of greater cooperation between Governments and civil society in monitoring and evaluation of alternative measures to detention.

# IV. Conclusions and recommendations

66. **The enjoyment of human rights by migrants, regardless of immigration status, is a crucial means to ensure equitable human development and social development and justice for migrants. Migrants can play an active role in the social and economic development of host countries and contribute to the development of countries of origin and transit, particularly when their human rights are fulfilled in a manner that ensures equal opportunities and gender equality. Human rights, together with gender and age-sensitive strategies, should therefore feature prominently and systematically as an integral part of the overall strategy to achieve development in the context of migration.**

67. **Migration governance should be clearly human-centred, and grounded in human rights law, and it should therefore recognize the inherent dignity of every human being, promote equality and the prohibition of discrimination and fully incorporate the principle of equal opportunities and choices for all so that everyone, regardless of immigration status, can develop their own unique potential and have a chance to contribute to development and social progress.**[19]

[19] See Amartya Sen, *Development as Freedom*, Oxford University Press, 1999; United Nations Development Programme, *Human Development Report 2009: Overcoming barriers: Human mobility and development*.

**Ensuring that all migrants, regardless of their immigration status, enjoy their internationally recognized human rights at all stages of the migratory processes in countries of origin, transit and destination should be the guiding principle of migration governance.**

68. **In the Special Rapporteur's view, the international community has created an important momentum for enhanced international cooperation in addressing the multifaceted issues raised by the international movement of people, as advocated by the Secretary-General in his report on international migration and development in 2005.[20] In his view, it is imperative that human rights are fully incorporated in all migration-related processes and that a rights-based approach to migration features prominently at the policy and decision-making levels on migration governance-related issues. In light of the foregoing, the Special Rapporteur wishes to put forth a number of general recommendations for further consideration and action.**

## A. A rights-based approach to migration governance

69. **States should effectively promote and protect the human rights and fundamental freedoms of all migrants, especially the rights of women and children, regardless of their immigration status, in conformity with the Charter of the United Nations and international human rights law and standards.**

70. **States that have not done so should incorporate the applicable legal framework on human rights, the protection of the child, the protection of migrant workers and their families, the protection of asylum-seekers and refugees, the fight against transnational organized crime and the elimination of contemporary forms of slavery into their national laws and policies as well as into their bilateral, subregional and regional agreements for migration management.**

71. **Efforts directed to adopt a human rights-based approach to migration governance should be redoubled. States and other stakeholders should systematically be guided by, and further the realization of, human rights standards contained in and principles derived from the Universal Declaration of Human Rights and other international human rights instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in all migration initiatives, including those implying multi-stakeholders cooperation and technical assistance and in all phases of the migration process.**

72. **The Special Rapporteur also recommends that States:**

(a) **Review their national policies to harmonize them with existing international, regional and subregional frameworks on rights-based approaches to migration;**

(b) **Implement the policy options referred to in ILO Convention No. 143 and its accompanying Recommendation No. 151, particularly in light of the particular problems faced by irregular migrant workers and other vulnerable migrant workers as a result of their status.**

[20] A/60/205.

## B. Decriminalizing and managing irregular migration

73. States should remove laws, policies, plans and programmes aimed at criminalizing irregular migration and should not consider breaches of immigration law a crime or punish such breaches with detention.

74. In line with the foregoing, the Special Rapporteur recommends that States:

(a) Undertake policy reforms to remove detention as a punishment for breaches of immigration laws and policies;

(b) Until such reforms are into effect, States should take all possible measures to suspend the application of detention as an anti-immigration measure and ensure that immigration detention is not applied to asylum-seekers, children (whether unaccompanied or with families) or victims of trafficking, labour exploitation and abuse, or to other vulnerable groups.

75. States should consider that irregular migrants are generally in a very vulnerable condition and that irregularity is due to several factors (including restrictive migration policies, social exclusion and marginalization as well as demand for labour in countries of destination). States should accordingly:

(a) Adopt integrated and protective approaches, instead of approaches that are punitive and based solely on security and border control concerns;

(b) Design and implement programmes, plans and policies to address irregular migration in a comprehensive and holistic way, without resorting to its criminalization;

(c) Take into account the root causes of migration and the importance of creating legal channels for migration in policymaking initiatives so that they can be comprehensive, human-centred and incorporate human rights;

(d) Promote multi-pronged and multi-stakeholder initiatives, preferably including civil society and migrants themselves (such as research, advocacy strategies, policy discussions, etc.) in order to examine the context-specific and human rights-based options to address irregular migration.

### 1. Regularization policies, plans and programmes

76. States are encouraged to adopt and promote regularization programmes, plans and policies as a crucial strategy for ensuring migrants' rights, prevent human rights violations and abuses associated with irregular migration, address marginalization and facilitate the integration of migrants and their families in the communities of destination.

77. States are particularly encouraged to:

(a) Develop public policies to regularize non-documented migrants (especially children and their families) through flexible, permanent and regular legal avenues and by extraordinary regularizations aimed at contributing to the social integration of the large number of irregular migrants living in host societies;

(b) Consider regularization programmes as a key element of migration policies in order to ensure social integration and family reunification, limit

migrant workers' exploitation and abuse and incorporate workers from informal and underground economies into the labour force, with clear benefits for host countries, including increasing contributions to national tax and social security revenues;

(c) Consider creating regularization options for persons who may not fall under the international refugee regime but who may need to have their human rights protected and consider granting legal residence to children and adolescent victims of abuse and exploitation as a durable solution, in line with the best interests of the child;

(d) Ensure that regularization policies are sustainable and respectful of human rights norms, inter alia, by incorporating provisions to protect migrants from reprisals from their employers who might prefer that they remain in an irregular status.

### 2. Managing massive and mixed migratory flows

78. States should not resort to collective deportations, which are contrary to international law and human rights standards. States should have regular monitoring mechanisms to prevent collective deportations and ensure that all removal or deportation orders and decisions comply with the safeguards recognized in article 22 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

79. States should ensure that their border control and anti-smuggling efforts are carried out in a manner that respects and protects human rights, does not interfere with search and rescue obligations, and does not block access to asylum procedures and the identification of trafficked victims.

80. The Special Rapporteur encourages the establishment and implementation of institutionalized services and programmes to provide comprehensive support and protection to persons arriving in mixed migratory flows, especially women, children and the elderly, including means to detect those who are in need of international protection. Protection services should include access to humanitarian assistance in the first instance, including adequate food and water, and access to health services, legal advice and effective asylum procedures. Longer term needs should include access to durable solutions in the case of persons in need of international protection and support for return to the community of origin for those people who are deemed able to return with no risk to their human rights.

81. The detention of children and adolescents through border control measures, such as interception at sea, should be addressed through a child protection approach. Similarly, migration authorities responsible for the mistreatment of children should be held fully accountable.

## C. Preventing ethnic profiling of migrant communities, hate crimes, racism, racial discrimination, xenophobia and related intolerance

82. States should prohibit ethnic profiling of migrant communities as a form of discrimination.

83. **States should encourage greater harmony, tolerance and respect for migrants, asylum-seekers and refugees within the wider society, with a view to eliminating acts of racism, xenophobia and other forms of related intolerance directed against migrants.**

84. **In particular, States should:**

(a) **Develop or strengthen programmes, including ensuring civil society participation, meant to tackle xenophobia in public speech and the media and discrimination and intolerance against migrants and their families;**

(b) **Ensure that effective remedies are available to victims of racism, racial discrimination, xenophobia and related intolerance and monitor the responses of the judicial system to allegations of xenophobia and hate crimes against migrants, with due regard for age and gender considerations;**

(c) **Implement intercultural policies aimed to raise children in an environment that accepts and values differences, discouraging racism and xenophobia and fostering children's participation in the design and implementation of such policies;**

(d) **Strengthen awareness-raising programmes to combat prejudice against migrant communities and increase awareness-raising efforts to prevent abusive practices by employers, regardless of immigration status.**

## D. Finding alternatives to immigration detention

85. **States that continue to punish irregular migration with imprisonment should revise and reform their immigration laws and decriminalize irregular migration. States should not deprive migrants of their right to liberty because of their migratory status.**

86. **The causes and circumstances leading to the deprivation of the liberty of migrants should be defined by laws that should provide adequate and effective remedies, including judicial review, in order to avoid arbitrary detention and guarantee access to legal services.**

87. **In cases where, exceptionally, detention of migrants is justified, this should not be made in facilities for criminals. Migration-related detention centres should not bear similarities to prison-like conditions. In connection with immigration detention facilities, States should bear in mind that:**

(a) **Authorities in charge of these facilities should not be security forces;**

(b) **States should hold private security firms that are hired to police immigration detention facilities accountable for upholding the rule of law and compliance with human rights;**

(c) **Officials working in immigration detention facilities should be trained in human rights, cultural sensitivities, age and gender considerations and the particular needs of vulnerable populations;**

(d) **Disciplinary rules should be markedly different from those in place in prison facilities;**

(e) Social protection (including access to education, health care, recreation and legal assistance), as well as contact with family in both countries of destination and origin, should be guaranteed: contact should also be facilitated with immigrant communities in destination countries and civil society institutions.

88. States should allow consular access to and independent scrutiny and control mechanisms of the conditions of immigration detention (judicial authorities, international and local non-governmental organizations, civil society, international human rights mechanisms, consular services and humanitarian institutions).

89. Policies should guarantee the enforcement of such alternatives by administrative and judicial authorities.

90. States should consider and use alternatives to immigration detention in accordance with international law and human rights standards. Detention should not be considered necessary or proportionate if other less restrictive measures to achieve the same legitimate objective have not been considered and assessed.

91. Alternatives to detention should be available to all irregular migrants and asylum-seekers, whether documented or undocumented. Recourse to alternative measures should be based on an individual assessment of the migrant's particular circumstances and be available in practice without discrimination.

92. Alternative measures should be systematically considered by States before resorting to immigration detention. States should ensure that the conditions and criteria to choose alternative measures do not discriminate in law or practice against particular groups of non-nationals, whether on the basis of their origin, economic situation, immigration or other status. These means also should be:

(a) The least intrusive and restrictive in order to attain the same objectives of immigration-related detention, such as avoiding that migrants abscond and guaranteeing their presence in court or at administrative proceedings;

(b) Subjected to legal review and migrants should therefore be granted the possibility of challenging them before a judicial or other competent and independent authority or body.

93. States should provide alternatives to detention for family groups when parents are detained on the sole basis of migratory status, keeping in mind the necessary balance between the need to protect family unity and the best interests of the child. In all decisions concerning children, the best interests of the child should be the primary consideration.

94. States should enact and use a broad range of alternative measures. In developing such measures, States should draw on some of the existing practical alternatives already applied in some States. Alternative measures may include registration requirements; reporting or monitoring conditions; the deposit of a financial guarantee; or an obligation to stay at a designated address, an open centre or other special accommodation. Reporting requirements, where used, should not be unduly onerous, invasive or difficult to comply with. Bail, bond and surety should be made available to irregular migrants under conditions

that are reasonable and realistic. The use of open centres, directed residence or special accommodation should be developed, with open centres preferred over more restrictive alternatives.

95. Non-custodial measures, such as reporting requirements, should always be explicitly considered before resorting to detention, with the least restrictive measures considered first. The application of alternative measures must itself be governed by international human rights standards, including the basic principles of legality, necessity and proportionality, as well as non-discrimination. Alternative measures must take into account the particular situation of irregular migrants and asylum-seekers, including their frequently unstable financial or housing situation. If any measure is applied unnecessarily or disproportionately, in a discriminatory manner or without due regard to individual factors such as the particular vulnerability of an individual, it could amount to a restriction inconsistent with international human rights standards. Safeguards surrounding alternatives to detention should be as rigorous as those applied to situations of detention, including ensuring that the alternative measure is established in law, is non-discriminatory in purpose and effect and is subject to judicial review, and that the migrant has access to legal counsel. States should always use the least restrictive means necessary as alternatives to detention.

96. States should endeavour to develop these alternatives in consultation with local non-governmental organizations with expertise in meeting the needs of migrants. This could be done, for example, through joint initiatives between Government authorities and non-governmental organizations for release and supervision of irregular migrants.

## E. Protecting specific groups

### 1. Protection of asylum-seekers

97. The Special Rapporteur recommends the development of standardized procedures to ensure access to asylum procedures as well as an assessment of the situation in the country of origin or habitual residence of the rejected asylum-seekers before deciding on their repatriation. In this regard, States should follow the several country-specific guidelines issued by UNHCR in order to avoid returning rejected asylum-seekers whose appeals have been exhausted to countries where they may be at risk of human rights violations.

98. States should not consider asylum-seekers as irregular migrants and should follow the guidance provided by UNHCR not to detain asylum-seekers but to house them in open reception centres.

99. States are encouraged to incorporate gender and age considerations into their asylum determination procedures.

### 2. The protection of children

100. States should ensure the protection of the child in all migration-related circumstances regardless of his or her individual or family immigration status and take the best interest of the child as a primary consideration in all migration-related initiatives and actions concerning children at all levels.

101. **Detention of children should be a measure of last resort and should be for the shortest period of time possible. The deprivation of liberty of children in the context of migration should never have a punitive nature, accordingly:**

(a) **The exceptional migration related detention of children should be executed in places ensuring the integral protection and well-being of the child, taking due consideration of the fulfilment of the child's rights, inter alia, to education, health care, recreation, consular assistance and legal representation;**

(b) **States should bear in mind that children should be kept separate from non-related adults; if housed with families, they should have accommodation distinct from other adults.**

102. **The Special Rapporteur encourages the conclusion of bilateral and multilateral agreements based on existing international human rights norms and standards and increased cooperation at the regional level to protect migrant children, especially those unaccompanied, including in matters of safe repatriation, the fight against trafficking, sexual exploitation and smuggling and assistance to victims.**

103. **States should base any decision to return a child or a child's parents to the country of origin on the best interests of the child, including the right to family unity and education.**

104. **States should uphold the principle of avoiding statelessness and enforce legal norms at the national and international levels to reduce statelessness resulting from the failure to register the birth of a child, including because of the fears associated with the criminalization of irregular migration. States should take effective measures to guarantee the birth registration of children born outside their parents' country of origin, regardless of the parents' immigration status.**

105. **States should ensure that age-assessment processes comply with international standards and that the persons concerned are allowed access to effective remedies to challenge age-assessment decisions. States should also consider according a "benefit of the doubt" in age-determination procedures.**

106. **The Special Rapporteur encourages the design and implementation of programmes for the sustainable return and reintegration of children, including alternatives to return on the basis of the best interest of the child.**

### 3. The protection of victims of trafficking, labour abuse and exploitation

107. **The Special Rapporteur further recommends that Governments:**

(a) **Take all necessary steps to prevent multiple discrimination and re-victimization, ensuring that effective structures and mechanisms are put in place to assist victims to reintegrate into society, including by providing them with psychological, health and social assistance;**

(b) **Incorporate into national policies, plans and programmes, and effectively implement, the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1);**

(c) **Consider signing the Convention on Action against Trafficking in Human Beings of the Council of Europe, which is open to non-member States,**

as a means to strengthen the legal framework and mechanisms for the protection of trafficked victims.

## F. Information-sharing, data and analysis

108. States should strengthen efforts to collect data and measure the impact of their migration policies on the enjoyment of human rights by migrants and societies at large at all stages of the migration process.

109. States are especially encouraged to share information about key indicators of the impact of migration programmes, plans and policies to address irregular migration, as well as common challenges and best practices at all levels across boundaries and regions.

110. Stakeholders should make available statistical and substantive information on, inter alia:

(a) The root causes of migration;

(b) The demand of migrant labour, including irregular migrant labour, in countries of destination;

(c) The distinction between immigration control and crime prevention.

111. The Special Rapporteur recommends the compilation and sharing of best practices in addressing irregular migration to help States and other stakeholders to develop human rights-based public policies.

112. States should develop awareness-raising campaigns in countries of origin, transit and destination to alert potential migrants about the possible dangers of irregular migration and to inform them of the existing protection mechanisms.

## G. Recommendations on international cooperation

113. States should recognize the important role played by consular offices in the protection of migrants and ensure that they are sufficiently resourced and given an explicit mandate to intervene on behalf of their nationals who are in irregular situation, including those in detention centres. The Special Rapporteur encourages consular offices to share good practices and strengthen cooperation.

114. The mass media should contribute to building trust and cooperation between migrants and host societies, regardless of immigration status, inter alia, through campaigns aimed at showing that irregular migration is distinct from crime and criminality.

115. Human rights mechanisms, namely special procedures, treaty bodies and the universal periodic review mechanism should continue to pay special attention to the rights of migrants and the impact of the criminalization of irregular migration on the enjoyment of human rights by migrants.

116. The Special Rapporteur encourages the Global Migration Group to establish mechanisms to monitor State practices on migration management and

**share good practices in the harmonization of the management of migration with international law and human rights standards.**

117. **The Special Rapporteur welcomes policymaking discussions on migration in international policy platforms. The Special Rapporteur also welcomes the efforts made by the Global Migration Group to tackle migration issues from a human rights perspective, to be led by OHCHR. He also encourages inter-institutional coordination at the national level, including through specific mechanisms and with the participation of civil society, consular services, local governments and the private sector, for the development and implementation of migration policies that adopt a human-centred perspective.**